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From: Turley, Jennifer

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Subject: Water Law News for January 22, 2014



<https://encrypted-tbn0.gstatic.com/images?q=tbn:ANd9GcRN9bpm12acAzW1AGcHT7RdHbOs0JSkOJn1FfjRgHelJFdZnLI-Water Law News>

for January 22, 2014

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Drinking Water

Seventh Circuit Nixes Class Certification In Case Alleging Groundwater Contamination

Class certification was improper for Illinois property owners who allege an oil refinery contaminated their groundwater because the district court didn't rigorously analyze the plaintiffs' proposed methodology for proving...

Energy

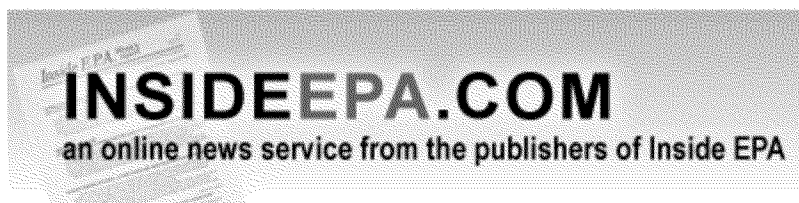
Canadian Aboriginal Group Contests Federal Approval of Shell Oil Sands Mine Expansion

An aboriginal group in Alberta province is asking the Federal Court of Canada to overturn the national government's approval of Shell Canada Energy's large Jackpine oil sands mine expansion (Allan Adam v. Minister of the Environment,...

Mining

Begich Opposes Pebble Mine Over Concerns on Fish

Sen. Mark Begich (D-Alaska) said he opposes development of the Pebble Mine near Bristol Bay in Alaska because of its potential to affect sockeye salmon. Begich is the only member of the Alaska congressional delegation to oppose the prospective...



inepa.com

Inside EPA's **Environmental Policy Alert**, 01/22/14

<http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-01/22/2014/menu-id-132.html>

Inside EPA's **Risk Policy Report**, 01/21/14

<http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-01/21/2014/menu-id-130.html>

EPA To Assess Algal Toxins In Forthcoming SDWA Regulatory Review

EPA is planning to include an assessment of toxins from algal blooms in a forthcoming review required by the Safe Drinking Water Act (SDWA) as part of its ongoing efforts to address nutrient pollution concerns through the SDWA, potentially imposing additional regulatory requirements on nutrients.

Greenwire
[Greenwire](#)

DROUGHT:

Californians face 'new reality' of water scarcity

Anne C. Mulkern and Debra Kahn, E&E reporters

Published: Tuesday, January 21, 2014

Living with long-term drought could become the "new reality" for California, experts said after Gov. Jerry Brown (D) on Friday officially declared the state's record-shattering water shortage.

Water managers, farmers and fishermen are girding themselves for water scarcities in the months ahead. Some fear not only that the drought's effects will be more pronounced than previous dry spells, but that the populous state might be forced to adjust to less precipitation on an ongoing basis.

The drought should be seen as a catalyst for making needed changes to how California handles its water, some experts argued.

"One of our messages is, this kind of drought and the way it's happening is really our new reality," said Lester Snow, who was director of California's Department of Water Resources in former Gov. Arnold Schwarzenegger's (R) administration and now is executive director of the California Water Foundation, which advocates for sustainable water management. "It's more of the way water is going to occur in California."

The drought's effects could be widespread, those who deal with water said. The state's population has shot to 38 million people today, compared with 22 million during the last record-breaking drought in 1977. Meanwhile, the state's farms increased their revenue to \$45 billion from \$9.6 billion over the same time period. The earlier figure is in that year's dollars.

"The consequences of this drought will be magnified on the human and economic scale compared to our worst drought in modern times" in 1977, said Jason Peltier, deputy general manager of the Westlands Water District, which supplies irrigation water to about 600,000 acres of farmland in the San Joaquin Valley.

California's water issues are a function of its meteorological conditions, hydrologic patterns and population concentrations. But the effects of the drought could stretch far beyond the state's borders.

Brown's emergency declaration opens the state to federal aid and orders the hiring of more firefighters to combat dry conditions, even as the drought has spread into Oregon and Washington (*ClimateWire*, Jan. 10). The Golden State's specialty crops, meanwhile, account for more than half the nation's fruits, vegetables and nuts in addition to nearly \$7 billion of exports worldwide, according to California Department of Food and Agriculture data.

In the Central Valley, hundreds of thousands of acres of land used to grow cotton, tomatoes, vegetables and other crops might be left fallow as farmers run out of affordable water. Some will use what supplies they have to protect investments in crops growing on trees and vines.

Overall, there might be 600,000 to 700,000 acres in the state's San Joaquin Valley that aren't planted this year if the situation doesn't improve with more rainfall, according to Dave Kranz, a spokesman for the California Farm Bureau Federation, which represents about 74,000 farmers and ranchers.

That region is a popular place for growing lettuce, tomatoes, onions, garlic, wheat and cotton, he said.

The drought declaration comes as farmers are deciding what crops to plant that will be harvested in summer and fall. Most farmers will wait as long as they can, Kranz said, while watching precipitation forecasts.

"Those are going to potentially be affected by reduced water allocations," Kranz said.

Officials from one key agricultural district in the Central Valley said they expected 200,000 acres -- a third of their acreage -- to lie dormant. Farmers would sacrifice lower-value annual crops like cotton and tomatoes in order to preserve almonds, grapes and other profitable plants that grow on vines and trees, Peltier said.

"The first crops to go, they'll all be row crops of one sort or another."

A sort of Catch-22 situation has evolved as water has become scarcer, he said. Restrictions on deliveries of water from the Central Valley, which costs about \$150 per acre-foot, force farmers to buy water on the open market at up to \$600 per acre-foot, he said. To make the economics work, they have to plant more valuable crops.

"Knowing market water is always going to be more expensive than project water, our farmers have coped with that economic reality by planting crops with higher returns," he said. "They have to be able to buy more expensive water because the project is broken."

The drought declaration could make U.S. Department of Agriculture help available to farmers. USDA already has declared 27 California counties a drought disaster area, Kranz said. That means farmers in those counties, as well as in bordering counties, are eligible to apply for low-interest emergency loans.

People face fines for washing cars

Most of the state's 38 million residents are still being spared the worst effects of the drought. Brown's emergency drought proclamation last week urged people to voluntarily curb their water use by 20 percent. He warned that mandatory restrictions could follow.

"We're facing perhaps the worst drought that California has ever seen since records began being kept about 100 years ago," he said. "As the weeks go by, we'll recalibrate, and certainly we're holding out the possibility of mandatory conservation" ([E&ENews PM](#), Jan. 17).

The drought will play out differently in different parts of the state, said Newsha Ajami, director of urban water policy for Water in the West at Stanford University. Local

agencies might set new rules on water conservation, like those limiting watering of lawns and car washing.

Sacramento officials last week ordered customers to cut their water use 20 percent, ahead of Brown's call for voluntary reductions. Folsom Lake Reservoir, on the American River, is currently at 17 percent capacity, a third of what it contains under average conditions for this time of year. If it drops much further, Sacramento might be unable to divert water upstream of the Folsom Dam.

The city is stepping up enforcement of its existing conservation rules, which include restrictions on watering lawns by time of day and day of the week. People can be fined up to \$1,000 for repeat violations, such as washing their cars on the wrong day. Officials hope to shave 84 gallons off an average family's usage of 417 gallons per day.

Major Southern California metropolises, in contrast, have been trumpeting their savings through conservation and storage projects.

"Los Angeles has prepared for this drought," the city's municipal utility, the Los Angeles Department of Water and Power, said in a statement. "Today, Angelenos use less water per capita than residents of any major U.S. city with a population over 1 million."

The city offers rebates for water-efficient appliances, as well as a "Cash for Grass" rebate -- raised last April from \$1.50 to \$2 per square foot -- for people who replace their grass lawns with native plants, mulch or other dry landscaping.

San Diego responded to Brown's call for a 20 percent cut by reassuring its residents that no restrictions would be needed, noting that the governor's declaration was "primarily to assist Northern and Central California."

"While the call for the successful conservation efforts that have become a way of life in our city still stands, the water supply situation in San Diego is currently stable," the city said in a news release.

Southern California's resilience is the result of experience gained in past droughts, one observer pointed out. In 1999, the Metropolitan Water District of Southern California, a cooperative of agencies that supplies 19 million people, finished building a reservoir that nearly doubled the region's surface storage capacity. It is currently at 72 percent capacity.

"Southern California made some significant investments in diversifying their water supplies, and that's what we need to see more cities and agricultural districts do," said Doug Obegi, an attorney with the Natural Resources Defense Council's water program. "We're on track to be drier than the '76-'77 drought this year, yet Southern California has ample water reserves. With any luck, they're going to be able to weather this drought. That's a pretty remarkable testament to those prior investments."

The region also receives water from both the Sacramento-San Joaquin and Colorado

river systems, which insulates it somewhat from drought.

"The likelihood you get a drought on both of them is lower than the likelihood you get a drought on one of them," Obegi said.

Fixes for an uncertain future

Brown had to declare the latest drought because "this is sort of a slow-moving disaster coming," said Ajami of Stanford. Last year also was a very dry year, she said. And the drought could go on for several years.

"For us, it's a harbinger of what our future is going to be like, and we need to start responding to it," said Snow, with the California Water Foundation.

As the climate changes, California is losing snowpack, with more precipitation coming as rain. There needs to be better planning to store water in wetter years so it's available for future droughts, he said.

Snow believes it's impractical to build more large dams. Instead, he said, there needs to be a portfolio of solutions, including recycling of wastewater. There also could be groundwater recharge, in which water during wet years through various methods is moved into groundwater. Cities could also change how they deal with stormwater, by capturing, storing and treating it instead of letting it run off. And there could be improved efficiencies in agriculture, he said.

Kranz also advocated California's boosting its water storage capabilities as part of an "all of the above approach" like the one Snow described. He noted that in November 2012, there were heavy rains, but to comply with environmental regulations, "a lot of water ended up going out to ocean."

Federal rules sometimes require pumping curtailments to protect delta smelt and salmon. Storage would have allowed more to stay in the state, Kranz said. Storage also is needed to prevent flooding, he said, as more precipitation falls as rain and not snow.

Storage would add flexibility, he said, adding, "You can only squeeze so much out of every drop of water before you need more drops."

BRISTOL BAY:

Begich opposition to Pebble mine draws praise, jeers

Manuel Quiñones, E&E reporter

Published: Tuesday, January 21, 2014

Alaska Democratic Sen. Mark Begich's decision to come out against the proposed Pebble copper and gold mining project in the Bristol Bay watershed puts him in a unique political position in his state.

He becomes the only member of the Alaska congressional delegation to oppose the mine, and all the candidates challenging him for re-election to his Senate seat this year also support the project.

Begich's decision came just days after the release of a U.S. EPA watershed assessment that said a mine like Pebble would hurt valuable salmon fisheries and other habitats. Begich followed comments on the mine to local media over the weekend with a formal position statement yesterday.

"I have long been a strong supporter of Alaska's mining industry and believe we must do all we can to support resource development industries that provide family wage jobs for Alaskans and keep our economy strong," Begich said in his statement yesterday. "But years of scientific study has proven the proposed Pebble Mine cannot be developed safely in the Bristol Bay watershed."

Begich added, "Bristol Bay produces half the world's red salmon and supports thousands of fishing jobs and way of life for thousands of Alaskans. Thousands of Alaskans have weighed in on this issue and I have listened to their concerns. Pebble is not worth the risk."

Pebble project opponents -- including fishing advocates, some local tribes and environmental groups -- are cheering Begich for taking a stand.

"Hunters and anglers, guides, lodge and sport-fishing business owners, and others across Alaska and America are grateful for Senator Begich's decision to follow the EPA's clear science and oppose the Pebble mine," said Tim Bristol, Alaska program chief for Trout Unlimited.

Begich, however, did not take a position on whether EPA should veto key permits for the mine before the conclusion of the permitting process, which has yet to begin. Many mine opponents want EPA to halt the proposal as soon as possible.

"If they want to apply for the permit, that's their decision," Begich told Alaska Public Radio.

Pebble LP developers, backed by Northern Dynasty Minerals Ltd., wasted no time expressing their deep displeasure with Begich's decision to express his opposition to their project.

"We are disappointed that Senator Begich has come out against thousands of new jobs, hundreds of millions in state revenue, and potentially billions in economic activity for Alaska," a statement said.

"We also are stunned that an Alaskan Senator supports the EPA -- a federal agency acting unilaterally -- to make decisions about future development on state land in Alaska," Pebble said.

Last week, EPA said the watershed assessment was a scientific rather than policy decision. The agency will now begin weighing how to proceed, said Region 10 Administrator Dennis McLerran, who has jurisdiction over Alaska.

As a result, lobbying on both sides of the issue will likely intensify. This week Sen. Maria Cantwell (D-Wash.), an early Pebble opponent, is holding a rally in Seattle aimed at protecting fishing jobs.

Jason Metrokin, CEO of the Bristol Bay Native Corp., said in a statement, "We look forward to working with the Senator to ensure appropriate protections for Bristol Bay."

Campaign 2014

Members of Alaska's congressional delegation plus a list of Republicans who want to unseat Begich have focused their comments on EPA's involvement in the development, rather than the project's merits.

"Alaskans are tired of Washington bureaucrats introducing hurdle after hurdle to development in Alaska," said former Alaska Attorney General and former Natural Resources Commissioner Dan Sullivan, who is running for Senate.

"Our natural resources are among our greatest assets, and their responsible development is critical to a continued and promising future for Alaska," he said.

Lt. Gov. Mead Treadwell (R) has made similar statements and is also running for Senate. "We have the ability to create good jobs across our state and protect the environment," his campaign website said. "We need Washington DC to get out of the way and bring decision-making back to Alaska."

In response to Begich's announcement, Treadwell called the senator's statements "premature" and urged him to defend local decision-making. "Mark Begich should be defending that power, not calling down the EPA to interfere," said Treadwell.

However, last month, as the overseer of elections, Treadwell certified that Pebble opponents had collected enough signatures for a ballot initiative to require legislative approval for large-scale mining in the Bristol Bay area.

Pebble opponents, who have aired ads against the mine, have said they will keep up the pressure during the elections. They point to a 2011 poll showing significant support for EPA involvement.

Pebble, however, accuses opponents of waging a misinformation campaign. "[I]t is no secret that there is a substantial difference of opinion regarding the science of EPA's recent Bristol Bay Assessment," the company statement said. "Not many Alaskans think EPA is impartial."

Begich said he is charting a well-worn path. "I agree with other pro-development Alaska leaders such as [former Republican] Senator Ted Stevens and former Governors Jay Hammond [R] and Tony Knowles [D], that Pebble is the wrong mine in the wrong place for Alaska."

WATER POLLUTION:

W.Va. governor outlines new regulatory legislation in wake of chemical spill

Jason Plautz, E&E reporter

Published: Tuesday, January 21, 2014

West Virginia governor Earl Ray Tomblin is proposing legislation to regulate aboveground storage tanks after a chemical facility leaked 7,500 gallons of a coal-cleaning chemical into the state's Elk River and left 300,000 people without tap water.

Tomblin (D) said the bill would set safety standards for aboveground tanks for construction and maintenance and would empower the state's Department of Environmental Protection to establish a regulatory program. His proposal would require

all operators to self-report the location of any aboveground tanks with details on their construction and would require written annual reports outlining any changes to the tanks.

"The last 11 days have been an extremely difficult time for so many West Virginians," said Tomblin in a statement. "This proposed legislation includes reasonable, common sense provisions to regulate above ground storage tanks across the state including those located in areas of critical concern near our public water supply and distribution systems."

Tomblin outlined the proposal with state Senate President Jeff Kessler (D) and state House Speaker Tim Miley (D).

The bill also would require public water systems to have written plans in place in the event of an emergency, including a discharge of a contaminant. It would require annual inspections and certifications and that facilities submit individual spill-response plans for each tank.

The bill is one of a flurry to arrive in the days after the Jan. 9 spill of the coal-cleaning chemical 4-methylcyclohexane methanol (MCHM). The state Senate has already seen a bill requiring the state to inspect aboveground tanks, and West Virginia's Democratic U.S. Sens. Joe Manchin and Jay Rockefeller next week will introduce a bill expanding regulations for aboveground chemical storage near drinking water ([Greenwire](#), Jan. 20).

OCEANS:

More pilot whales beach themselves, die in Fla.

Published: Tuesday, January 21, 2014

Authorities have found five dead pilot whales and two beached whales on a sandbar off the southwestern coast of Florida.

Officials are monitoring another pod of two dozen pilot whales farther offshore.

Pilot whales typically live in deep water. Their appearance inland usually indicates toxicity or disease.

Last month, more than 50 pilot whales were stranded in Everglades National Park, and many died ([Associated Press](#), Jan. 21). -- **WW**

WATER POLLUTION:

Some cruise lines boost sustainability

Published: Tuesday, January 21, 2014

Some cruise lines are trying to reduce their waste, fuel consumption and overall environmental footprint.

The *New Economy* recently presented the world's largest cruise liner Carnival with the Clean Tech Award for Best Marine Solutions Company. The award recognizes the company's \$180 million addition of new exhaust filtration systems to its North American ships. The systems extract sulfur, nitrogen and particulate matter from exhaust.

The 42 ships slated for retrofitting make up less than half of the 101 ships in Carnival's fleet.

The retrofits come as the International Maritime Organization instituted higher emissions standards for a 200-mile zone around the United States and Canada.

Cruise ships have a major environmental impact. Carnival used 25 million metric tons of water and more than 3 million metric tons of fuel in 2011. At the same time, the company generated more than 145,000 metric tons of sulfur dioxide and 11 metric tons of greenhouse gas.

The motivation to be more eco-friendly appears to stem from a mix of new laws and consumer pressure. But despite stricter standards, some environmentalists argue that the cruise industry does not face enough regulation (Bruce Watson, [London Guardian](#), Jan. 20). -- **WW**

AUSTRALIA:

Officials OK cull of endangered great white sharks

Published: Tuesday, January 21, 2014

After several fatal shark attacks in Western Australia, local officials plan to launch a great white shark cull in the next few days.

The animals are protected in Australia, but federal officials have allowed the state an exemption. The move is part of a bid to protect the state's \$6.9 billion tourism industry and improve beach safety.

As part of the plan, the state will bait and kill sharks more than 3 meters (10 feet) long.

Western Australia Premier Colin Barnett proposed the plan last year after the area's seventh fatal shark attack in three years. The hunt has drawn criticism from conservationists, who argue it won't make the beaches safer (Rob Taylor, [*Wall Street Journal*](#), Jan. 21). -- **WW**

HYDRAULIC FRACTURING:

Former Pa. DEP chief Krancer discusses court decision on gas drilling

Published: Tuesday, January 21, 2014

Following last month's Pennsylvania Supreme Court decision overturning sections of the state's gas drilling law, how much authority do municipalities now have over drilling practices? During today's OnPoint, Michael Krancer, former secretary of the Pennsylvania Department of Environmental Protection and now chairman of Blank Rome's energy, petrochemical and natural resources practice, discusses the ruling and its implications for Marcellus Shale operations. He also weighs in on the impact of this

year's Pennsylvania governor's race on the future of fracking.

[Click here](#) to watch today's OnPoint.

ClimateWire -- Wed., January 22, 2014 -- [Read the full edition](#)

1. NATIONS: E.U. agrees to 40% GHG cuts by 2030

PARIS -- The European Commission today launched its climate change blueprint for the coming decades that includes a plan to cut greenhouse gas emissions by 40 percent. José Manuel Barroso, president of the European Commission, called the plan "ambitious but feasible, the most cost-effective for the 2050 road map." The framework also maps out European renewable energy goals through 2030.

2. SCIENCE: Targets of climate hate mail rally to support one another

At a time when climate scientists are increasingly encouraged to engage with the media, the activity also reveals them to the blogosphere of skeptics, who, with the push of a key, can focus their followers' attention on a given researcher. An influx of vitriolic emails can be intimidating, scientists say, but such experiences have also forged stronger links among researchers.

TODAY'S STORIES

3. WEATHER: 2013 was 4th-warmest year on record, despite chill in parts of U.S.

4. REGULATION: EPA advisory board to recommend ongoing review of carbon capture and sequestration

5. RESEARCH: Combustion efficiency remains a crucial frontier for curbing emissions

6. BUSINESS: Awareness of climate costs, risks builds among major companies -- survey

7. RISK: Extreme weather in Canada drives unprecedented insurance losses

8. TRADE: U.S. solar industry protests new China tariffs

9. AGRICULTURE: Kenyan subsistence farmers get carbon credits from World Bank fund

10. WEATHER: Slowdown in Atlantic current could lead to dry British summers

11. ARCTIC: Region may have its own shipping rules by 2016

12. FLOODS: Flooding displaces thousands in Indonesian capital

13. BUSINESS: Can public procurement fight climate change?

E&ETV's OnPoint

14. CLIMATE: Former Colo. Gov. Ritter pitches emissions plan based on executive agency action

EnergyWire -- Wed., January 22, 2014 -- [Read the full edition](#)

1. UTILITIES: Consumer advocates dogged in fight against higher rates

State utility consumer advocates may not be cut from the same cloth, but they share a responsibility that is becoming ever more challenging: to protect ratepayers from trends that affect electric service quality, reliability and price stability.

2. EARTHQUAKES: Texas regulators say there's little they can do on

quakes

AUSTIN, Texas -- State oil and gas regulators here are working with researchers studying a string of earthquakes that may be tied to oil and gas drilling, but they don't have the authority to shut down an operation if they verify a link.

THIS MORNING'S STORIES

3. NATURAL GAS: Propane supplies dwindle as Midwest, Northeast cope with another big storm

4. SECURITY: Iran an 'unknown' as energy companies gird for cyberattacks

5. ELECTRICITY: Power provider raises dividend with midstream IPO on horizon

6. EARNINGS: Overseas markets boost profits for oil field services leaders

7. SECURITY: Oil boom doesn't change global fundamentals for U.S. -- report

8. ECONOMY: Booming oil and gas production curbing inflation, consumer prices

9. BUSINESS: Canadian driller fends off \$17B takeover bid

10. GAS EXPORTS: Cartel discussed forming its own bank

11. ELECTRICITY: Trying to ensure a blackout-free Super Bowl

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